

Application No.: 10/712,529

Case No.: 59388US002

**REMARKS**

Claims 1, 5, 7, and 23 have been amended. Claim 24 has been added. Claims 6, 14, and 17 have been cancelled. Upon entry of these amendments, claims 1-5, 7-13, 15, 16, and 18-24 will be pending.

The specification has been amended to correct minor grammatical and typographical errors. Applicants submit that no new matter has been added.

Claims 1 and 23 have been amended to clarify the structure of the fluid control films of the present invention. These fluid control films comprise a first side and a second side. The first side comprises a polymeric sheet rather than a mass of fibers (e.g., a web formed from fibers). (See, e.g., page 15, lines 5-8. See also page 16, lines 1-19.) The polymeric sheet has a microstructured surface with a plurality of channels. As claims 1 and 23 already recite that the "first side" comprises a polymeric sheet having a microstructured surface, the redundant phrase "on the first side" has been deleted for clarity.

Claims 1 and 23 have also been amended to recite a Markush group of substrate layers. Support for these amendments can be found in, e.g., claims 10-13, 15, 16, and 18, as originally filed, and at page 19, lines 3-10.

The fluid control films of the present invention may include a backing associated with the microstructured polymeric sheet. (See, e.g., page 11, line 28 – page 12, line 15.) Claim 5 has been amended to clarify that the nonwoven layer is a backing layer. (See page 12, lines 3-6.)

Claim 7 has been amended to correct a minor typographical error. The redundant phrase "on the" has been deleted.

New claim 24 has been added. Support for claim 24 can be found at, e.g., original claims 23, and 10-12, as well as at page 19, lines 6-7, and page 20, line 28 – page 21, line 25.

Please cancel claims 6, 14, and 17.

Application No.: 10/712,529

Case No.: 59388US002

**Nonstatutory Double Patenting**

Claims 1-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1, 3-10, 13, 17, 20, and 21 of copending Application No. 10/325,410. According to the Patent Office, "the exterior building wall recited in the instant application does not distinguish from the wall or exterior structured (sic, structure) surface recited in 10/325,140 since walls typically contain exterior surfaces." Applicants respectfully submit that the amendments to claims 1 and 23 render this rejection moot and respectfully request that it be withdrawn.

**§ 102 Rejections**

Claims 1-7, 14, and 23 stand rejected under 35 USC § 102(b) as purportedly being anticipated by either Reicherts et al. (US 6,410,118) or Waggoner et al. (US 6,355,333).

**Reicherts et al. (US 6,410,118)**

According to the Patent Office, Reicherts et al. teach a fluid control film containing a microstructured surface. (Office Action mailed July 13, 2005; ¶ 4.) Applicants respectfully traverse. At best, Reicherts et al. describe a water durable board that is textured to allow water to collect and drain down the interstitial spaces created by the texture. (See, e.g., col. 2, lines 6-16, and col. 3, lines 32-52.) The fluid control films of the present invention are patentably distinct from the textured boards of Reicherts et al. Therefore, Applicants respectfully submit that the Patent Office has failed to show how Reicherts et al. describe a fluid control film as that term is understood by one of ordinary skill in the art.

In addition, as amended, the fluid control films of the present invention require a polymeric sheet having a microstructured surface with a plurality of channels. In contrast, the water durable boards of Reicherts et al. are the exterior cladding of the building structure (see col. 3, lines 4-5) and are made of, e.g., cement board or gypsum (see col. 3, lines 32-39).

Also, claims 1 and 23 have been amended to recite a Markush group incorporating the substrates of claims 10, 13, 15, 16, and 18. Applicants note that none of these claims were rejected under 35 USC §102(b) as being anticipated by Reicherts et al.

Application No.: 10/712,529

Case No.: 59388US002

With respect to claim 7, the Patent Office also asserts that Reicherts et al. describe a fluid control film applied with an adhesive and/or staples. (Office Action mailed July 13, 2005; ¶ 4.) Applicants respectfully traverse. Applicants note that Reicherts et al. state that the textured water durable board is mechanically attached, usually through the use of screws. (See, col. 4, lines 8-14, emphasis added.) Reicherts et al. do describe attaching a weather resistant barrier (i.e., standard #15 felt) using staples or adhesives. (See col. 3, lines 21-31.) However, the Patent Office has failed to show any relationship between this weather resistant barrier and the fluid control films of the present invention.

In summary, Applicants respectfully submit that the Patent Office has failed to show how Reicherts et al. describe, teach, or suggest (1) a fluid control film; (2) a fluid control film comprising a polymeric sheet having a microstructured surface; (3) a substrate selected from the Markush groups recited in independent claims 1 or 23, or (4) the attachment of such a film using an adhesive. For at least any one of these reasons, the rejections under 35 USC § 102(b) based on Reicherts et al. have been overcome and should be withdrawn.

Waggoner et al. (US 6,355,333)

According to the Patent Office, Waggoner et al. teach a fluid control film containing a microstructured surface. (Office Action mailed July 13, 2005; ¶ 4.)

First, independent claims 1 and 23 have been amended to require that the first side of the fluid control films of the present invention comprise a polymeric sheet having a microstructured surface. In contrast, Waggoner et al. is explicitly directed to a nonwoven, spunbonded, barrier sheet materials consisting essentially of synthetic fibers. (See, e.g., col. 2, lines 3-9 and claim 1. See, also, col. 1, lines 51-66.) The present application explicitly distinguishes between polymeric sheets and webs formed from fibers. For example, the channels of the fluid control films of the invention may provide more effective fluid flow than is achieved with webs formed from fibers, as the walls of channels formed in fibers will exhibit relatively random undulations and complex surfaces that interfere with flow of fluid through the channels. (See, e.g., page 15, lines 5-14.)

Application No.: 10/712,529

Case No.: 59388US002

Second, claims 1 and 23 have been amended to recite a Markush group incorporating the substrates of claims 10, 13, 15, 16, and 18. Applicants note that none of these claims were rejected under 35 USC §102(b) as being anticipated by Waggoner et al.

For at least any one of these reasons, the claims of the present invention are novel in view of Waggoner et al. Therefore, Applicants respectfully submit the rejections under 35 USC § 102(b) based on Waggoner et al. have been overcome and should be withdrawn.

In summary, the rejections of claims 1-5, 7, and 23 under 35 USC § 102(b) as purportedly being anticipated by either Reicherts et al (US 6,410,118) or Waggoner et al. (US 6,355,333) have been overcome and should be withdrawn. Claims 6 and 14 have been cancelled rendering their rejection moot.

### **§ 103 Rejections**

Claims 8-13 and 15-22 stand rejected under 35 USC § 103(a) as purportedly being unpatentable over either Reicherts et al. (US 6,410,118) or Waggoner et al. (US 6,355,333).

The Patent Office acknowledges that neither Reicherts et al. nor Waggoner et al. recite the specific substrates the film is applied to. However, according to the Patent Office, it would have been obvious to apply the film to all, and any, desired sections of the building in order to apply the protection features of the film thereto. (Office Action mailed July 13, 2005; ¶ 6.) Applicants respectfully traverse.

First, each of claims 8-13 and 15-22 depends from claim 1 and adds patentable features thereto. For at least the reasons stated above, the Patent Office has failed to show how Reicherts et al. or Waggoner et al. describe, teach, or suggest all elements of independent claim 1. Thus, the rejections under 35 USC § 103(a) based upon Reicherts et al. and Waggoner et al. are unwarranted and should be withdrawn.

Second, with respect to dependent claims 10-13, 15, 16, 18 and 22, both Reicherts et al. (see, e.g., col. 3, lines 41-52) and Waggoner et al. (col. 6, lines 42-61; and col. 7, lines 14-21) describe vertical drainage systems. Applicants respectfully submit that the Patent Office has failed to show how Reicherts et al. or Waggoner et al. describe, teach, or suggest the application of their fluid control materials to any surface other than vertical exterior wall surfaces. In

Application No.: 10/712,529

Case No.: 59388US002

contrast, some embodiments of the present fluid control films can be applied to non-vertical surfaces such as roofs (see, e.g., FIGS. 4a-4c), frames for defined openings such as windows or doors (see, e.g., FIGS. 6 and 7), and exterior protrusions (see FIGS. 9a and 9b). (See, e.g., page 19, line 3 – page 22, line 18. See also Example at page 22, line 24 – page 24, line 10; and FIG. 8 demonstrating the effectiveness of a fluid control film of one embodiment of the present invention when applied in a non-vertical direction, i.e., around a simulated window or door opening.)

For at least these reasons, Applicants respectfully submit that the Patent Office has failed to show how either Reicherts et al. or Waggoner et al. describe, teach, or suggest all elements of the claimed invention. Thus, the rejection of claims 8-13 and 15-16, and 18-22 under 35 USC § 103(a) as purportedly being unpatentable over either Reicherts et al. (US 6,410,118) or Waggoner et al. (US 6,355,333) is unwarranted and should be withdrawn. Claim 17 has been cancelled rendering its rejection moot.

New claim 24 depends from claim 23. Claim 23 is patentable for at least the reasons stated above; thus, new claim 24 is likewise patentable.

In view of the above, it is submitted that the application is in condition for allowance. Reconsideration of the application is requested and allowance of claims 1-5, 7-13, 15, 16, and 18-24, as amended, at an early date is solicited.

Respectfully submitted,

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